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MAR 11 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IN THE MATTER OF:

MM DOCKET NO. 93-296

QUADRAS, INC.

Dewitt, Arkansas

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FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
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The above-entitled matter came on for pre-hearing conference pursuant to Notice before Walter C. Miller, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 1, on Tuesday, February 22, 1994, at 8:25 a.m.

APPEARANCES:

On behalf of Quadras:

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Washington, D.C. 20015

On behalf of Chief, Mass Media Bureau:

Y. PAULETTE LADEN, Esquire
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25	Conference Began: 8:25 a.m.	Conference Ended: 8:45 a.m.

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P R O C E E D I N G S

1
2 JUDGE MILLER: Let's go on the record then. This is
3 the date for the Minority Distress Sale prehearing conference
4 in the Dewitt, Arkansas revocation proceeding, MM Docket
5 93-296. We're here today to obtain an on-the-record progress
6 report on Quadras's efforts to implement the Commission's
7 distress sales policy. But before we begin, let's take some
8 appearances. For Quadras, Inc.?

9 MR. TEPPER: Good morning, Your Honor. Cary Tepper.

10 JUDGE MILLER: For the Chief, Audio Services
11 Division?

12 MS. LADEN: For the Chief of the Mass Media Bureau,
13 Your Honor.

14 JUDGE MILLER: Mass Media Bureau?

15 MS. LADEN: Paulette Laden.

16 JUDGE MILLER: I made a mistake and took it off the
17 designation order. All right. Mr. Tepper, on January 11th
18 your motion to suspend procedural date was granted. That's
19 FCC 94-M16. The hearing procedures were suspended and two
20 distress sales procedural dates were substituted. Today is
21 the first of this procedural dates. Today we're going to get
22 a detailed progress report from you on the progress of the
23 sale of KDEW-AM. Why don't you go ahead and start this
24 report?

25 MR. TEPPER: Okay. Your Honor, let me give you a

1 document I've already circulated. This is a document
2 consisting of -- it's a compilation of six documents.
3 Document number one is the appraisal that Quadras has obtained
4 by Sunbelt Media. Document number two is a letter from
5 buyer's counsel dated February 3rd, 1994, regarding then the
6 status of their appraisal as well as their efforts to secure
7 evidence of the buyer's Native-American heritage and that
8 counsel's comments regarding a draft asset purchase agreement
9 that I had circulated late in January. Document number three
10 is the revised draft asset purchase agreement including my
11 facsimile notations dated February 10th, 1994. The only thing
12 that remains to be decided, to be decided in the agreement is
13 the actual purchase price based upon the finality of buyer's
14 appraisal which they do have a draft appraisal that was just
15 secured yesterday, that's document number five here.
16 Backtracking a bit, my document number four is a letter from
17 buyer's counsel dated I believe yesterday acknowledging
18 acceptance of the draft purchase agreement, the status of
19 their appraisal and they included the application of Max
20 Pearson, the buyer, for his certificate of degree of Indian
21 blood and Mr. Pearson's application to the Indian -- to the
22 Cherokee Nation and his supporting documentation is attached
23 here as document number six.

24 In summary, we have, we have attained substantial
25 progress. As soon as the buyer's appraisal is finalized which

1 I am told should be in a day or two, we will come up with a
2 definite purchase price, we will finalize the asset purchase
3 agreement. I have already drafted my portion of the
4 assignment application. And I am hoping if things go as
5 planned that we may be on file early next week.

6 JUDGE MILLER: All right. Let me ask a couple of
7 questions. You're not going to -- will you need a third
8 appraisal?

9 MR. TEPPER: It's my understanding from the case law
10 that a third appraisal will only be required if the Bureau
11 does not accept the, the two appraisals.

12 MS. LADEN: I believe the third appraisal is
13 required if there is a difference. I can't remember the
14 percentage. I think it's a five-percent --

15 JUDGE MILLER: Five percent is what, what, what,
16 what seems to stick in my mind.

17 MR. TEPPER: Okay.

18 JUDGE MILLER: In, in other words, if it's a five
19 percent -- more than a five-percent difference.

20 MR. TEPPER: Okay. Well, right now I don't know
21 what the buyer's final appraisal will be. I see the draft
22 here. It seems to be very close to what our appraisal came at
23 -- in at.

24 JUDGE MILLER: Well, put -- why don't we put both
25 figures on, on, on --

1 MR. TEPPER: On the record?
2 JUDGE MILLER: On the record?
3 MR. TEPPER: Okay. Right now?
4 JUDGE MILLER: Yeah.
5 MR. TEPPER: Sunbelt Media which is the appraisal
6 secured by Quadras values the station at a fair-market value
7 had it not gone silent at a value of approximately 25,000.
8 Its current value because of it being silent was appraised at
9 7,500.
10 JUDGE MILLER: Okay.
11 MR. TEPPER: And the buyer's appraisal -- find it
12 here --
13 MS. LADEN: I've got a number in the last page of
14 Tab No. 1, the very last page.
15 MR. TEPPER: That's --
16 MS. LADEN: Oh, I'm sorry, is that the first one
17 you --
18 MR. TEPPER: That's the first one.
19 JUDGE MILLER: What, what, what is, what is -- let's
20 take a look at Exhibit 5.
21 MR. TEPPER: Okay.
22 JUDGE MILLER: Document five, I mean. This -- what
23 is -- is Mediacor, Inc. their -- the other party's appraiser?
24 MR. TEPPER: Exactly.
25 JUDGE MILLER: \$7,500 that appraisal too?

1 MR. TEPPER: Right. I, I just received this
2 yesterday for the first time.

3 JUDGE MILLER: Well, it's -- all I'm, I'm saying,
4 if, if, if I'm reading correctly --

5 MR. TEPPER: Right. It says a fair-market value
6 between 5- and 10,000 and he averaged that out at 7,500.

7 JUDGE MILLER: Okay. So, so that there is no
8 difference between your 7,500 figure and theirs?

9 MR. TEPPER: That appears correct. Again, I just
10 want to state again for the record, Mediacor's appraisal is
11 still in draft form. I'm assuming the numbers won't change.
12 But I cannot honestly tell you that they won't. But --

13 JUDGE MILLER: Well, let me ask you this question,
14 Mr. Tepper. Why is this still in draft form? Why -- what's,
15 what's, what's holding up there? I read your -- I read what
16 you're saying and I listen to what you say and it sounds like
17 you're doing what needs to be done from your end.

18 MR. TEPPER: Yes, sir.

19 JUDGE MILLER: Now -- but it takes two to tango.
20 And what's the matter? What's the matter with these --

21 MR. TEPPER: Buyer's counsel which is John Trent,
22 has been in touch with Mediacor, Inc. for over a month now and
23 the principal owner apparently has been traveling. We were
24 supposed to have this appraisal two weeks ago and it kept
25 getting delayed for reasons I'm not exactly sure of. But John

1 Trent has been doing his best to get the final version and
2 apparently we will have the final version in a day or two if
3 Mr. Trent's letter of yesterday --

4 JUDGE MILLER: Well, where is Waynesboro, Virginia?
5 I'm not --

6 MR. TEPPER: Waynesboro?

7 JUDGE MILLER: -- born and raised -- not born in
8 Virginia but raised in Virginia at least for the last few, few
9 years. But Waynesboro is where?

10 MR. TEPPER: It's a little past Winchester, I
11 believe. It's about 75 miles from here I think.

12 JUDGE MILLER: All right. Let me ask, let me ask me
13 ask you a couple of questions to -- hope that you can answer
14 them. When I look at -- we also have a, we also have a sale
15 of KDEW-FM going forward do we not?

16 MR. TEPPER: That has already been applied for and
17 the purchaser is the same gentleman who now is proposing to
18 purchase this station.

19 JUDGE MILLER: All right. Now, KDEW-AM and KDEW-FM
20 have identical coordinates.

21 MR. TEPPER: They share the same tower, that is --
22 well, they shared the same tower. That is correct.

23 JUDGE MILLER: Namely, 34.16:9N, 91.21:2W. Now, do
24 they also share the same studio?

25 MR. TEPPER: It was my understanding that at the

1 time they operated they shared the same studio building but
2 had separate equipment. They needed a separate transmitter,
3 they had separate -- some separate studio equipment.

4 JUDGE MILLER: Now, has, has, has -- have both
5 appraisers separated that which should be allocated to KDEW
6 from -- FM from that which should be allocated to KDEW-AM?

7 MR. TEPPER: Your Honor, yes, they have, because
8 they were -- included here, I just have it in handwritten
9 form, of the remaining KDEW-AM assets which include some
10 switching equipment, some turntables, assorted cart machines,
11 reel-to-reels and some miscellaneous microphones, telephones,
12 tools, tubes and other studio equipment which will be included
13 as an attachment to the asset purchase agreement.

14 JUDGE MILLER: Well, you're satisfied then that
15 there has been an allocation?

16 MR. TEPPER: As best -- yes. You got to understand,
17 the station has been silent now for almost three years and
18 some of that equipment is not even operational anymore. But
19 what is operational has been included on our list and I have
20 asked the client to come up with the equipment list which they
21 did and that's what the appraisals are based upon. That
22 equipment list plus other demographic information on the
23 market as well as past performance of, of the AM station.

24 JUDGE MILLER: All right. Now, let's, let's get
25 down to the question of Mr. Pearson satisfactorily

1 demonstrating -- at least I believe he should demonstrate to
2 the Commission that he is a Native-American. And I see here
3 he has applied with the Cherokee Nation, right?

4 MR. TEPPER: That's correct, Your Honor.

5 JUDGE MILLER: Now, is there any, is there any rules
6 or regulations that require a certain percentage of the blood
7 to be Cherokee?

8 MR. TEPPER: In my past experiences with various
9 tribes in comparative hearing contexts, usually if you have
10 one ounce of blood you are considered Native-American. That
11 could be 1/256, it could be 1/500. It's just a matter of the
12 tribe being satisfied that there is a genealogical history
13 which he -- Mr. Pearson apparently is attempting to resurrect.
14 I'm not quite sure what the last page is on document number
15 six. It appears to be something from the State of Texas.
16 It's a declaration, I believe, and apparently it supports his
17 application but I have not had an opportunity to talk to
18 counsel -- buyer's counsel about this. What we had proposed
19 to do, we have been advised by the Cherokee Nation it may take
20 six to eight weeks for them to resolve these matters. Mr. --

21 JUDGE MILLER: From what date?

22 MR. TEPPER: From the date of application which I
23 believe was about two weeks ago. February 8th -- well, I
24 believe he, he commenced the application procedure about two
25 weeks ago. Of course, it took him a while to find out exactly

1 what he needed to do. But in any event, Mr. Pearson proposes
2 to submit a declaration to the Commission under the penalty of
3 perjury about his Native-American heritage and attaching
4 copies of these documents as well as any other documents he
5 may have at that time to show his efforts.

6 JUDGE MILLER: Well, let me figure out -- I'm, I'm
7 not the one who passes on it, but that satisfies me if he's
8 willing to take -- put in a document under penalty of perjury
9 and, and along with those supporting documents.

10 MR. TEPPER: Okay.

11 JUDGE MILLER: Then if while it's waiting there on
12 the processing line if the, the result comes in --

13 MR. TEPPER: Right.

14 JUDGE MILLER: -- you could always send it in.

15 MR. TEPPER: Okay.

16 JUDGE MILLER: Okay? Does that make sense?

17 MS. LADEN: Yes, Your Honor. I was going to say the
18 application has to go on public notice which means there will
19 be 30 days for petitions to deny. So as a practical matter if
20 it -- you know, that time frame is not inconsistent with --

21 JUDGE MILLER: Well, since, since this sale is being
22 handled a little differently than the other stations and this
23 sale is dependent on -- I think it's, I think it's a better
24 part of wisdom that the man demonstrates that he is in fact a
25 Native-American. All right. Now, let me say that we're not

1 proceeding with, with all the speed that I would like but
2 we're proceeding.

3 MR. TEPPER: And I -- we're not proceeding with the
4 speed that I would like either, Your Honor.

5 JUDGE MILLER: All right.

6 MR. TEPPER: I've been doing my best to keep the
7 process moving.

8 JUDGE MILLER: Well, let me ask you this. When can
9 you file your motion for distress sale with the Commission?

10 MR. TEPPER: I am hoping that it will be filed next
11 week. I am told that the appraisal -- if, if the final
12 buyer's appraisal is secured this week we will send out the
13 asset purchase agreement as well as the application for the
14 clients to sign. Once it's back in our hands, I --

15 JUDGE MILLER: Well, Trent has still got to do his
16 part of the application.

17 MR. TEPPER: And we talk every day. Well, his part
18 of the application, I'm sure you're familiar with Form 314,
19 and it shouldn't take too long I would hope. But I, I expect
20 us to be on file next week.

21 JUDGE MILLER: You are, you are convinced that you
22 can move those people who need to be moved?

23 MR. TEPPER: The only people now that need to be
24 moved is the appraiser. Once we get his final product then
25 it's the attorneys finalizing the documents and the contract,

1 filling in the number -- purchase number and having the
2 clients sign it and that could be Fed Ex'd overnight, and
3 weather permitting we should have it back in a day or two and
4 sincerely hoping to be on file next week.

5 JUDGE MILLER: All right. Now, Ms. Laden, I'll
6 address you. What, what I have always done in these things is
7 once you give them the right to implement the distress sale
8 policy, then I call for this report. And then at that, at
9 that time, I ask the Bureau if they're satisfied we're, we're
10 proceeding correctly. Because about 50 percent of the time
11 the Bureau says hey wait a minute, we're not moving with a
12 darn here and we think you ought to reinstate hearing dates.
13 Are you satisfied with Mr., Mr. Cary's report?

14 MS. LADEN: Yes, Your Honor. I also wanted to point
15 out for the record that Mr. Tepper and I have talked several
16 times about the case law on distress sales. We've exchanged
17 citations and cases back and forth and requirements for the
18 appraisals. So, so, we have been in touch as far as getting
19 the thing in a form that, that will be acceptable to the
20 Bureau and we still talked about it this morning. So, I am
21 satisfied with the progress, Your Honor.

22 JUDGE MILLER: All right. Let me say that I'm, I'm
23 I'm -- while I'm not exhilarated, Mr. Tepper, I, I think
24 you've done an honest and straightforward job to try to get,
25 get it done. And I'm aware of the fact that once you give

1 people some slack dates, god, they take advantage of them.
2 But that was what I was -- what I, what I had to do. And as
3 far as I am concerned, your report is perfectly acceptable to
4 the bench as well as the Mass Media Bureau. And the only
5 thing I can say is deliver us a copy of the application that
6 you file --

7 MR. TEPPER: Sure.

8 JUDGE MILLER: -- with the Commission and make sure
9 the -- Paulette gets a copy and I get a copy in case you want
10 to make any comments after looking it over. And also if, if
11 it becomes necessary for the, for the processing line over
12 there to talk to you you won't be, you won't be in the dark,
13 you'll have a copy of whatever they have. All right?

14 MS. LADEN: Yes, Your Honor.

15 JUDGE MILLER: And now, is there anything further we
16 need to take up today? All right. Then we will stand
17 adjourned until further notice.

18 MR. TEPPER: Thank you, Your Honor.

19 (Whereupon, hearing adjourned at 8:45 a.m.)
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CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

IN THE MATTER OF QUADRAS, INC.
Name

MMDOCKET NO. 93-296
Docket No.

WASHINGTON, D.C.
Place

FEBRUARY 22, 1994
Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 14, inclusive, are the true, accurate and complete transcript prepared from the reporting by BARBARA J. LORD in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

February 25, 1994
Date

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